



Award Number 17977

Docket Number MS-18335

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

HAROLD CHANCELLOR

LOUISVILLE & NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Petitioner's claim is based upon a breach of contract by the Louisville & Nashville Railroad Company. Under the contract, Mr. Chancellor was a protected employee entitled to preservation of his employment on a regularly held and assigned position. However, the Louisville & Nashville Railroad Company breached the contract heretofore entered into and changed his protected employment and reduced his rate of compensation.

OPINION OF BOARD: At the time the occurrence which resulted in the claim before the Division, Claimant was regularly assigned as stenographer-clerk in Carrier's Howell yard office at Evansville, Indiana, with hours 8:00 A.M. to 4:00 P.M., Monday through Friday, with Saturday and Sunday as rest days. For a considerable period of time prior to April 27, 1968, because of the needs of the service, Claimant was called to work on Saturdays, for which he was compensated at time and one-half rate. On April 22, 1968, he was informed that, effective April 27, 1968, service on his assigned rest day (Saturday) would no longer be needed.

On June 6, 1968, the Claimant, in his capacity as Local Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, filed a claim with the Carrier's Terminal Trainmaster, on a continuing basis, for a day's pay for every Saturday, retroactive to April 27, 1968, or an extra day's pay for each week for as long as he works for the Carrier only five days a week. He based his claim on the provisions of Mediation Agreement, Case A-7128, signed at Washington, D. C., on February 7, 1965.

The claim was denied by the Terminal Trainmaster on June 10, 1968, and thereafter progressed through proper channels up to and including the Director of Personnel, the highest officer of the Carrier designated to handle such matters, by the duly authorized representatives of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. On August 9, 1968, the claim was denied by the Director of Personnel in letter of that date addressed to the General Chairman a copy of which is being made a part of the record in the dispute.

On May 23, 1969, the Petitioner wrote the Executive Secretary of the Division serving written notice of his intention to file ex parte submission within thirty days.

At the outset the Carrier contends that the claim is barred under the provisions of Rule 20(c) of the working rules agreement between the Carrier

and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 16, 1959, which rule provides:

"20(c) — The requirements outlined in paragraphs (a) and (b) pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional Board of Adjustment that has been agreed to by the parties hereto as provided in Section 3, Second, of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine months' period herein referred to."

The Carrier contends that as the claim was denied by the Director of Personnel, the highest officer of the Carrier designated to handle such disputes, on August 9, 1968, and Claimant did not institute proceedings before the Division until May 23, 1969, the nine-month time limit of the above quoted rule was exceeded, and the claim is, therefore, barred.

The Petitioner, in response to the contention of the Carrier that the claim is barred, contends (1) that the time limit provisions of the Agreement effective October 16, 1959, have no application to claims arising under the Mediation Agreement of February 7, 1965; and (2) even if the time limit provisions were applicable, notice of intention to file an ex parte submission was filed within nine months from September 11, 1968, on which date the claim of Mr. Chancellor was discussed in conference between representatives of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and representatives of the Carrier.

The Board finds that the Petitioner is in error as to the application of the time limit rules. Interpretation of November 24, 1965, of the Mediation Agreement of February 7, 1965, Agreement provides:

"HANDLING OF CLAIMS OR GRIEVANCES

"Rules and procedures governing the handling of claims or grievances including time limit rules, shall not apply to the handling of questions or disputes concerning the meaning or interpretation of the provisions of the February 7, 1965 Agreement. Such questions or disputes may be handled at any time and may be taken up directly between the General Chairman and the highest operating officer of the carrier designated to handle such matters.

"Individual claims for compensation alleged to be due pursuant to the Agreement shall be handled in accordance with the rules governing the handling of claims and grievances, including time limit rules, provided that the time limit on claims involving an interpretation of the Agreement shall not begin to run until 30 days after the interpretation is rendered."

The claim involved herein is an individual claim for compensation alleged to be due pursuant to the Mediation Agreement of February 7, 1965,

and is, therefore, subject to the time limit rules (Rule 20(c)) governing the handling of claims and grievances.

As to the contention of the Petitioner that the nine months' limit began from date of conference on September 11, 1968, the rule is clear in providing that the nine months' period may be extended by agreement. The record contains no evidence of an agreement to extend that period. This Board has consistently held that where precise time limits exist they must be complied with unless waived by the parties; but, neither an invitation to discuss a pending case nor the actual discussion, in and of themselves, can be interpreted as time limit extension agreements. (Awards 13942, 12417, 11777, 11597, 10347, among others.)

The Board finds and holds that the claim is barred under the provisions of Rule 20(c) of the Agreement effective October 16, 1959.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1970.